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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1883.

No. 211.

ELIZA STEVENS, PLAINTIFF IN ERROR,

vs.

E. E. GRIFFITH.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

FILED DECEMBER 24, 1880.

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1 Transcript of the papers and record in the consolidated causes of John F. Stephens and wife *vs.* E. E. Griffith, Joseph E. Houston, John Carson, and Robert Russell, and John Coulter and others *vs.* E. E. Griffith, Joseph E. Houston, John Carson, and Robert Russell, in the chancery court at Madisonville, Monroe county, Tennessee.

Pros. Bond.

We, John F. Stephens and W. J. Hicks, acknowledge ourselves held and firmly bound unto Elisha E. Griffith, E. Houston, Robert Russell, and John Carson in the sum of two hundred and fifty dollars, payment of which we bind ourselves, our heirs and legal representatives, but void on condition that said John F. Stephens and wife shall prosecute with effect a bill by them this day filed in the chancery court at Madisonville, Tenn., against said E. E. Griffith and others, or in case of failure shall well and truly pay and satisfy all costs awarded for such failure.

Given under our hands this 20th day of Sept., 1866.

JOHN F. STEPHENS,
By W. J. HICKS,
his Solicitor.
W. J. HICKS.

2 *Original Bill.*—Filed Sept. 20th, 1866.

To the Hon. O. P. TEMPLE, chancelior, &c., holding the chancery court at Madisonville:

John F. Stephens and wife, Lavinia Stephens, citizens of the state of Illinois, complainants,
vs.
E. E. Griffith, Joseph E. Houston, Robert Russell, and John Carson, citizens of Monroe county, defendants.

The complainants respectfully show to the court that in the month of October, 1858, Jesse Rhea, the father of complainant Lavinia, departed this life, having first made and published his will, a copy of which, marked Exhibit "A," is herewith filed and prayed to be taken as part of this bill, which was duly admitted to probate at the August term, 1859, of the county court of Monroe county, and defendant Griffith, one of the executors named therein, entered into bond as required by law with the other defendants to this bill as his securities, and entered upon the discharge of the duties of said trust, but the other executor named in said bill never qualified as such. The said Rhea left besides the complainant two other children or their lineal descendants, and,
3 as will more fully appear from said exhibit, he directed that all his property not bequeathed to his widow should be sold and the proceeds thereof divided equally among his lawful heirs, ex-

cept the heirs of James Rhea, to whom he bequeathed five dollars each. Said Griffith, as executor, received funds belonging to the estate of said Jesse Rhea, deceased, about the year 1860, for property belonging to said estate sold by him, to the amount of ten or twelve thousand dollars over and above what was sufficient to pay the debts and charges against said estate, entitled to priority over the complainant Lavinia and the other heirs of the said Jesse Rhea, deceased, among whom it was provided by said will the proceeds of the property therein directed to be sold should be divided. Said Griffith has not paid any part of the share to which said complainant Lavinia is entitled. Under the provisions of said will said complainant Lavinia is entitled to one share of said fund, which share would amount to about one thousand dollars and interest. The complainants pray that process issue to make said Griffith and his said sureties in his executor's bond parties defendant to this
4 bill, and they be required to answer the same fully. Let them answer particularly as to the amount of funds belonging to said estate received by said executor, and *when* and from what source. The complainants also pray for an account and a decree for such amount as is found due them, and for general relief.

W. J. HICKS, *Solicitor.*

STATE OF TENNESSEE, }
Monroe county. }

W. J. Hicks, solicitor of the complainants, makes oath upon information that he believes the statements in the foregoing bill to be true, and hereto subscribed his name.

W. J. HICKS.

Subscribed and sworn to before me this 19th day of Sept., 1866.

S. P. HALE, *C. & M.*

Exhibit A.—Copy.

I, Jesse Rhea, being of old age, wishing to dispose of my property as I please, after my funeral expenses and my honest debts all paid, I will to my present wife, giving her widowhood or her natural lifetime, the plantation whereon Amos Bryum now lives, commonly called the Callahan farm, to wit, fifty acres of
5 land more or less, & then it to be sold and money to be divided my heirs. I also will to her one good horse beast, also one cow and calf, one feather bed and one year's provisions. And the land I now live on I wish it to be sold and all my perishable property to be sold with it, and the money to be divided equally among my lawful heirs, with exception of James Rhea's heirs. I will to them five dollars apiece, of which I am at this present time in my right mind and disposing memory. And I do constitute and appoint William Rhea and Elisha Griffith my lawful executors this

my last will and testament, as witness my hand and seal this 20th day of October, 1858.

JESSE RHEA.

Signed in the presence of us, present:

his
DAVID + STEPHENS.
mark

his
WILLIAM + RITCHY.
mark

Sub. to Ans.

State of Tennessee to the Sheriff of Monroe county, greeting:

Summon Elisha E. Griffith, Joseph E. Houston, Robert Russell and John Carson, to appear at the Chancery Court to be held at the court-house in Madisonville, on the first Monday of Decem-
6 ber next, to answer the bill of complaint of John F. Stephens and wife, filed against them in said court, and when and where you shall also return this writ and the manner in which you shall have executed the same.

Witness S. P. Hale, clerk & master of our said court, at office in Madisonville, the first Monday of June, 1866.

S. P. HALE, *C. & M.*

(Endorsed:) "183"; sub. to answer; John F. Stephens & wife *vs.* E. E. Griffith et al.

We acknowledge legal service of the within subpœna, with copy of original bill, Oct. 2, 1866.

E. E. GRIFFITH.
ROBERT RUSSELL.
JOHN CARSON.
J. E. HOUSTON.

Demurrer.

The defendants, by their solicitor, comes and says that they are not bound to answer said bill of John F. Stephens & wife, except by demurrer, & they do demur to the same, and show the following causes of demurrer:

1st. Said discloses the fact that there several other persons who are not sued that are interested in the fund sued for, who are not made parties to this bill. For this and other reasons they demur, &c., and pray judgment.

GEO. BROWN, *Sol.*

7 (Caption.) Dec. Term, 1866.

Be it remembered, that at a chancery court begun and held at the court house in Madisonville on the first Monday of December, 1866, being the third day of said month, and the time for holding the

chancery court for Monroe county, at Madisonville, according to the laws of the state of Tennessee, present and presiding, Hon. E. T. Hall, judge of the third judicial circuit of Tennesseee, by interchange with Hon. O. P. Temple, chancellor, &c.

FRIDAY, *December 7th*, 1866.

Court met pursuant to adjournment. Present and presiding, Hon. E. T. Hall, judge, &c.

John F. Stephens and wife
vs.
Elisha Griffith and others.

In this cause the defendants' demur to the complainants' bill coming on to be argued, and after argument of the counsel being heard, and due deliberation being had, the court being of the opinion that the demurrer being well taken, it is ordered that the same be sustained; to which action of the court the complainants, by their solicitor, except.

8 And on motion of complainants' solicitor the case of John Coulter and others against E. E. Griffith and others is ordered to be consolidated with this cause, and that this cause of John F. Stephens and wife *vs.* E. E. Griffith and others be made the leading cause, and the complainants have leave to amend their bill.

Amended bill.—Filed February 11th, 1867.

To the Hon. O. P. Temple, chancellor, &c., holding the chancery court at Madisonville:

John F. Stephens and wife, Lavinia Stephens, compl'ts,
vs.
Elisha E. Griffith and others, defendants.

The complainants by their amended bill respectfully show to the court, that on the 20th day of September, 1866, they filed their original bill in this honorable court against Elisha E. Griffith, the executor of the last will of Jesse Rhea, deceased, and Joseph E. Houston, Robert Russell and John Carson, his sureties executors' bond, to compel the payment of the distributive share of the said Lavinia in the estate of Jesse Rhea, deceased, under his will.

That a bill was at that time pending in this honorable court,
9 filed by John Coulter and others, distributees under said will, against said executor and his said sureties to compel the payment of *their* distributive shares in said estate. That at December term, 1866, of this court said bills were consolidated, and said first-mentioned case made the leading case, and leave granted the complainants to amend their bill, making additional parties thereto. The complainants pray to be allowed here to refer to and incorporate the several allegations and prayers contained in said original bills (and the exhibits filed herewith) as a part of this their amended bill as

fully as if herein repeated. And in addition to the allegations contained in said original bill complainants show that the said Jesse Rhea, deceased, left the following heirs and devisees, to wit:

1st. James Rhea, (a son of the testator,) who died intestate in the state of Missouri leaving the following children, who all live in the state of Missouri, to wit, Jesse, Nancy, James, Margaret, and Spencer Rhea, some of whom may be minors, and if so, let a guardian *ad litem* be appointed for them, if necessary. But it will be seen by the copy of the last will of Jesse Rhea, dec'd, exhibited with
10 the original bill, that these heirs take a mere trifle under said will, and they have probably been paid by the executor.

2nd. The heirs of Mary Coulter, deceased, (a daughter of the testator,) who are already before the court, excepting one Martha J. Brown, who resides in the state of Iowa.

3rd. Rebecca Keeble, (a daughter of testator,) who died leaving her husband, Manly Keeble, who is administrator of her estate, and leaving also the following children, John Keeble and Marion Keeble. Mrs. Keeble's representatives live in Blount county. Her distributive share was perhaps paid her during her lifetime.

4th. John Rhea, who died intestate in Monroe county, the place of his residence, about four or five years since, and no person has administered on his estate. He had probably been paid his distributive share by the executor. He left the following heirs, all of whom reside in Monroe county, to wit, Margaret A. Dixon & husband, O. M. Dixon, Elizabeth Smalling & husband, Jefferson Smalling, William Rhea, jr., Ellison T. Rhea, Samuel M. Rhea, Levi Rhea, Harvey Rhea, and Hettie C. Rhea, the last-named two of whom are minors, and have no regular guardian.

11 5th. William Rhea, (a son of testator,) who lives in Monroe county, has probably been paid his distributive share.

6th. Elizabeth Keeble, (daughter of testator,) who, with her husband, Richard Keeble, lives in Blount county, and has probably received her distributive share.

7th. Sarah Morgan, (daughter of testator,) who, with her husband, John Morgan, resides in the state of Missouri, and has probably received her distributive share.

8th. The heirs of Margaret Stephens, deceased, (a daughter of testator,) who are already before the court.

9th. Evaline McGill, (a daughter of testator,) who, with her husband, John McGill, is already before the court.

10th. The complainant, Lavinia Stephens, (a daughter of testator,) wife of complainant John F. Stephens.

11th. Wyly Rhea, (son of testator,) lives in Monroe county, and has perhaps been paid off.

12th. Lewis Rhea, (son of testator,) is a non-resident of the state.

13th. Riley Rhea, (son of testator,) a non-resident of this state.

14th. Eliza Lee, (a daughter of testator,) who has died in-
12 testate, leaving surviving her Alexander Lee, her husband, and the following children, to wit: Margaret Ferguson, wife

of William Ferguson; Pleasant Lee, Mary C. Lee, Sarah F., John, Elizabeth, Jesse and Nancy J. Lee, and Evaline Lee, her said representatives, all live in Monroe county, where she resided at the time of her death, and her said children are all minors except Margaret Ferguson, and they have no regular guardian.

No person has administered on the estate of said Eliza Lee, although more than six months have elapsed since her death. She perhaps received her distributive share during her lifetime. Said Jesse Rhea, deceased, left a widow, Amelia Rhea, who lives in Monroe county. Complainants pray that all the heirs or distributees of Jesse Rhea, deceased, and representatives of deceased heirs and distributees, as above indicated, who are not already before the court, be made parties defendant to this and the original consolidated bills in addition to the defendants who are already in court.

That process and copy of bill issue for that purpose as to the resident defendants, and that publication be made as to the non-residents; that notice with copy of the amended bill
13 also issue to the original defendants; that guardian *ad litem* be appointed for the minor defendants, and administrators on the estates of said intestates is deemed necessary; that an account be taken of the assets of the estates of Jesse Rhea, dec'd, which have come to the hands of the executor, or which ought to have come to his hands, &c., &c., and of disbursements; that said estate be settled under the direction of this honorable court, and all necessary accounts be taken and decrees rendered for that purpose.

They also pray as is prayed in the original bills and for general relief.

W. J. HICKS, *Sol.*

W. J. Hicks, solicitor for the complainants, makes oath, upon information, that the statements in the foregoing bill to the best of his information and belief are true.

W. J. HICKS.

Subscribed and sworn to before me this 11th day of February, 1867.

S. P. HALE, *C. & M.*

Sub. to Ans.

14 STATE OF TENNESSEE,
Chancery Court of Madisonville.

To the Sheriff of Monroe county, greeting:

Summons Margaret A. Dixon and her husband, O. M. Dixon; Elizabeth Smalling and her husband, Jefferson Smalling; William Rhea, jr., Ellison T. Rhea, Samuel M. Rhea, Lewis Rhea, Harvey Rhea, and Hettie C. Rhea, William Rhea, sr., Wiley Rhea, Alexander Lee, Margaret Ferguson and her husband, Wm. Ferguson; Pleasant Lee, Mary C. Lee, Sarah F. Lee, John Lee, Jesse Lee and

Nancy J. Lee, and Evaline Lee and Amelia Rhea, to appear at the next term of the Chancery Court, to be held at the court-house in Madisonville on the first Monday of June next, to answer the original and amended bill of John F. Stephens and wife, filed in said court against them and others, and when and where you will also return this writ and the manner in which you shall have executed the same. Witness S. P. Hale, clerk and master of said court, at office in Madisonville, the first Monday of December, 1866.

S. P. HALE. *C. & M.*

(Endorsed:) "183;" sub. to answer; John F. Stephens
15 and wife *vs.* E. E. Griffith and others; "iss'd Feb'y 12th, 1867;" came to hand 12th Feb'y, 1867; executed as commanded this the 28th day of May, 1867; A. Hawkins, d. sh'ff; costs $24.00.

Sub. to Ans.

STATE OF TENNESSEE,
Chancery Court at Madisonville.

To the Sheriff of Monroe county, greeting:

Summon Elisha E. Griffith, Robert Russell, John Carson, and Joseph E. Houston to appear at the next term of the Chancery Court, to be held at the court-house in Madisonville on the first Monday of June next, to answer the amended bill of John F. Stephens and wife and others, filed in said court against them, and when and where you shall also return this writ, and the manner in which you shall have executed the same. Witness S. P. Hale, clerk and master of said court, at office in Madisonville, the first Monday of December, 1866.

S. P. HALE, *C. & M.*

(Endorsed:) 183; sub. to answer; amended bill; J. F. Stephens et ux and others *vs.* E. E. Griffith et al.; iss'd Feb'y 12th, 1867;
came to hand 12th Feb'y, 1867; a correct copy of origin.
16 and amended bill delivered to E. E. Griffith, and executed this process *process* as commanded, this 21 day of May, 1867; A. Hawkins, d. sh'ff; costs, $4.00.

Sub. to Ans.

STATE OF TENNESSEE,
Chancery Court at Madisonville.

To the Sheriff of Blount county, greeting:

Summon Manley Keeble, John Keeble, Marion Keeble, Richard Keeble and his wife, Elizabeth Keeble, to appear at the Chancery Court, to be held at Madisonville on the first Monday of June next, to answer the original and amended bills filed by John T. Stephens and wife, Lavinia Stephens, in said court, against them and others,

and when and where you will also return this writ, and the manner in which you have executed the same. Witness S. P. Hale, clerk & master of said court, at office in Madisonville, the first Monday of December, 1866.

S. P. HALE, *C. & M.*

(Endorsed:) 183; sub. to answer; John F. Stephens & wife *vs.* E. E. Griffith et al.; iss'd Feb'y 13th, 1867; came to hand
17 March 29, 1867; G. W. Davis, dept. sh'ff; executed in full; left the copy of the bill with Manly Keeble this Apr'l 8, 1867; G. W. Davis, dept. sh'ff.

Order of publication on rule docket.—April rules, 1867.

John F. Stephens and wife and others } *vs.* E. E. Griffith and others. }

Original bill and amended bill.

Complainants charge that defendants Jesse Rhea, Nancy Rhea, James Rhea, Margaret Rhea, Spencer Rhea, Martha J. Brown, John Morgan, Sarah Morgan, Lewis Rhea and Riley Rhea are non-residents of the state of Tennessee. It is therefore ordered that publication be made for four successive weeks in the Press and Times, a newspaper published in Nashville, Tennessee, notifying said non-resident defendants to appear at the next term of the Chancery Court to be held at the court-house in Madisonville, Monroe county, Tenn., on the first Monday of June next, and answer the allegations of complainants' said bills, or the same will be taken as confessed and the cause set for hearing ex parte as to them.

This April 4th, 1867.

S. P. HALE,
Clerk and Master.

The above was published in the Nashville Press and Times April 9, 1867, and three succeeding weeks.

S. P. HALE, *C. & M.*

18 *Answer of Manley Keeble.*

To the Hon. O. P. Temple, chancellor, &c., setting for Monroe county at Madisonville:

The answer of Manly Keeble, adm'r of Rebecca Keeble, dec'd, to the bill and amended bill of John F. Stephens and wife, Lavinia Stephens, compl't, and Elisha E. Griffith and others, resp't, filed in your honor's court at Madisonville, Tenn. Resp't, saving and reserving all the usual exceptions to the said bill, for answer to such parts thereof as he is in any way interested in will state that he will not controvert any of the allegations of the original bill, and, answering the amended bill, resp't will state that he is adm'r of the estate

of his wife, Rebecca Keeble, deceased, but her children are not properly named in the said amended bill; their names are Mary, married to M. B. Garner, of Blount county; Katharine W., married to Jesse Kagle, of Sevier county; Samuel Keeble of Blount, Pleasant Keeble of Blount county, and Richard H. Keeble, also of Blount county, Tenn., but resp't does not suppose that they will have much interest in the personal estate of their mother, while she has a husband surviving her he will claim the same in right of his marriage.

19 Resp't will answer the allegations that his wife was paid in her lifetime in the following manner. She was paid as follows, but not one cent further. Received of James A. Coffin, clerk and master of the Chancery Court at Madisonville, Tenn., eight hundred and two dollars on account of the distributive share due her as one of the heirs at law of Jesse Rhea, dec'd. Witness my signature this June 4th, 1861.

her
REBECCA + KEEBLE.
mark.

Witness:
E. E. GRIFFITH.

This sum was paid to her in the following manner: E. E. Griffith has handed Mrs. Rebecca Keeble her note for money advanced to her 15th Mc'h, 1861, for $300, and an order on Richard Keeble for $500 dollars and costs, $2.00, making in all eight hundred and two dollars, for which she has executed to me her receipt of this date, June 4th, 1861.

J. A. COFFIN,
C. & M. of the Ch. Court, Madisonville.

Resp't answers and states that he has positive knowledge of the payments and knows that this is all that she ever received, and the 500 dollars in the order of Richard Keeble has not been only in confederate money, and this was put before her by fraud and misrepresentation on the part of Richard Keeble, and for which fraud

20 resp't has now pending in the Chancery Court of Blount county, Tenn., a bill against him, the said Richard, and as he is good for the am't, resp't expects to recover this am't off him. Resp't will now here state that he has fully answered the allegations of the bill and amended bill; he will pray for an account to be taken and the share of each one of the heirs ascertained, and he will pray for a settlement with him of the share of his said wife. And he will pray to be hence dismissed with his reasonable costs.

MANLEY KEEBLE.

McGINLEY, *Sol.*
2

STATE OF TENNESSEE, }
Blount county. }

Manley Keeble before me swears in due form of law that the facts set forth in this answer are true to the best of his knowledge and belief. May 11th, 1867.

MANLEY KEEBLE.

SOLOMON FARMER, [SEAL.]
Justice of the peace for Blount county, Tenn.

(Caption.)

June Term, 1867.—Monday, June 3d, 1867.

Be it remembered that on this 3d day of June, 1867, the same being the first Monday of the said month and the time for holding the Chancery Court for the chancery district of Monroe county, Tenn., at the court-house in Madisonville, there was present and presiding the Hon. O. P. Temple, chancellor, &c., when the following proceedings were had:

21

TUESDAY, *June 4th*, 1867.

Court met pursuant to adjournment, Hon. O. P. Temple, chancellor, presiding.

John T. Stephens and wife et al. }
vs. } Order.
E. E. Griffith and others. }

Three months is allowed defendants to file their answers so as not to delay the trial.

Judgment pro confesso at rules.

October rules, 1867.—The resident respondents having all been duly served with process, and publication having been regularly made as to non-resident resp'ts, and they all having failed to answer, judgment pro confesso is, therefore, on motion of complainants' solicitors, entered against them.

(Caption.) December Term, 1869.

MONDAY, *Dec.* 2, 1867.

22 Be it remembered, that on this 2d day of December, 1867, the same being the first Monday of said month, and the time for holding the chancery court for the chancery district of Monroe county, Tennessee, at the court-house in Madisonville, there was present and presiding the Hon. O. P. Temple, chancellor, &c., when the following proceedings were had:

John F. Stephens and wife
vs.
E. E. Griffith and others,
and
John Coulter and others
vs.
E. E. Griffith and others.

In these causes it appearing to the court that Harvey Rhea, Hettie C. Rhea, Pleasant Rhea, Mary C. Lee, Sarah P. Lee, John Lee, Elizabeth Lee, Jesse Lee. Nancy J. Lee and Evaline Lee are minors, and have no regular guardian, the court is pleased to appoint C. W. Hicks guardian *ad litem* for them.

Answer of guardian ad litem.—Filed Dec. 3, 1867.

In the Chancery Court of Monroe county, consolidated causes.

John T. Stephens and wife, Lavinia Stephens,
vs.
E. E. Griffith and others,
and
John Coulter and others
vs.
E. E. Griffith and others.

23 The answer of Charles W. Hicks, guardian *ad litem* of Harvey Rhea, Hettie C. Rhea, Pleasant Lee, Mary C. Lee, Sarah F. Lee, John Lee, Elizabeth Lee, Jesse Lee, Nancy J. Lee, and Evaline Lee, in the above named causes. Saving the benefit of the usual exceptions to the original and amended bill, this respondent, for answer to so much thereof as he deems it material for him to answer, says: He is willing to admit the death of Jesse Rhea, as stated in the original bills, and that an instrument purporting to be the last will of the said Jesse Rhea was either rightfully or wrongfully admitted to probate by the County Court of Monroe county, and he supposes Exhibit "A" to the bill is a correct copy of said instrument. He is also willing to admit that the said E. E. Griffith gave bond with the sureties mentioned in the bill and qualified as executor. This respondent supposes that the representatives of the said Jesse Rhea as legatees, devisees, &c., are truly set forth in the amended bill, but cannot speak with certainty on that point. This respondent does not know the amount of funds belonging to said es-
24 tate which came into the hands of said executor, nor does he know what portion of such funds has been paid to those entitled to receive the same, and he is willing that the necessary accounts be taken to ascertain what is due from said executor to each of the parties entitled to receive a distributive portion of the assets of said estate. And now, having fully answered said bills, this respondent invokes the protection of this honorable court to protect the

interests of his wards, and he prays to be hence dismissed with h reasonable costs.

CHARLES W. HICKS.

STATE OF TENNESSEE,
Monroe county.

Charles W. Hicks makes oath that the statements contained in h foregoing answer, to the best of his knowledge and belief, are true.

CHARLES W. HICKS.

Subscribed and sworn to before me this 3 day of Dec'r, 1867.

S. P. HALE, *C. & M.*

Answer of E. E. Griffith.—Filed Dec'r 4th, 1867.

25 The separate answer of E. E. Griffith to the bills now file against him & others in the Chancery Court at Madisonville Tenn., by John Coulter and wife and others, John F. Steph ens and others, now consolidated with the first mentioned cause For answer to all of said original and amended bills now filed i said consolidated causes, or to so much of said bills as he is advise it is material for him to answer, says it is true that Jesse Rhea de parted this life in Monroe county, Tenn., having made a last wil and testament, probably in the year 1859, leaving, as he believes, th children and grandchildren mentioned in the bill. Respondent sup poses a true copy of said will is exhibited with the bill. It will also be seen that respondent and Wm. Rhea was appointed executor o said will; the said William declined to act, and the resp't first refuse to undertake to execute the trust, but at length, after most urgen solicitation on the part of the resident legatees and devisees, di qualify as such executor in Aug., 1859, and then set about the dis charge of his duties as fast as possible. He found on hand cash an good notes belonging to said estate, about $400.00. There was littl personal property on hand except slaves, which he advertised and sol upon a credit of twelve months, for which he took good note 26 with security. They sold for very high prices; he remembers on boy, ten or twelve years old, that brought over thirteen hundre dollars, and they brought in the aggregate $8,865.00 on a credit o twelve months without interest, and that he collected all the note given for the property sold by him, and other notes in his hands, a fast as the notes fell due, and paid off the debts against the estat and the costs of administration, and made settlement with the county court of Monroe county, Tennessee, when it was ascertained that the shares of each legatee amounted to about the sum of $995.00, as he now remembers, and the respondent at once paid off to all the resi dent parties their respective shares under said will. It would also have been proper for him to have stated that he sold all the lands o his testator except the reversionary interest in the dower land assigned to the widow, she having dissented from the will. He received some

three thousand dollars from the lands, but this sum was included and accounted for in his settlement with the county court as before stated and was included in the distribution. Respondent was very desirous to pay off all the other parties entitled as well as the complainants if he had had any opportunity to
27 do so; and the only reason he did not do so was that complainants resided in states where he could not communicate with them, much less remit the money in his hands, on account of the late war. There was no one authorized to receive it and he had no means of transmitting it to them. He stated positively that he was most anxious to pay the monies to the parties entitled under the will as fast as it came to his hands, and would have done so if there had been any one to receive it from him. He states that he had this money on hand in July, 1863; he was notified by some proceedings of a court held at Knoxville under the authority of rebel rule to pay the money in his hands due the complainants to one Thomas J. Campbell, who he thinks claimed to be some kind of a receiver under said authority. The money not being paid, a suit was instituted against him in said court, and a judgment rendered against him by said court for the amount of money *of money* in his hands on the ground that the real owners of the fund resided north, and a law had been passed by the confederate congress to sequestrate or confiscate the property of all persons who resided be-
28 yond the rebel lines. Respondent states that the state of Tennessee was then in the hands of the rebel authorities, both civil and military, at that time, and he was threatened both by civil and military officers of confederate government punishing if he did not comply with the order of this court, and he believed it would be dangerous to resist, and that its officers there had power to seize his property and to arrest and imprison him unless he complied with their demands. So that, contrary to his wish and without his free consent, and on account of his fears of the threats he had heard and the fear of punishment and abuse he was not able to resist, he paid all the money in his hands due complainants to said receiver, Thomas J. Campbell, on the 7th day of July, 1863. He was forced to pay Henry Elliott, clerk of said court, for the costs of the proceedings against him in said court out of his own pocket. He avers that he administered said estate faithfully and accounted faithfully for all that came to his hands, and all that he thinks ought to have come to his hands, and he relies upon his said settlement with the county court and the payment he was forced to make to said Camp-
29 bell & Elliott as a full and complete bar to this complaint. Respondent will produce the receipts of said Campbell & Elliott for the amount of money he paid them upon the final hearing of this cause. And now, having fully answered, he asks that said bills be dismissed and he discharged with his costs.

GEORGE BROWN &
KEY, EAKIN & KEY, *Sol's.*

On this 4th day of Dec., 1867, before me, S. P. Hale, personally appeared E. E. Griffith and made oath that the statements made in the foregoing answer as of his own knowledge are true, and those on information he believes to be true.

E. E. GRIFFITH.

Sworn to & subscribed the day & date above written, Dec. 4, 1867.

S. P. HALE, *C. & M.*

Decree.

THURSDAY, *Dec. 5th*, 1867.

Court met pursuant to adjournment, Hon. O. P. Temple present & presiding.

John F. Stephens & wife & others
30 *vs.*
Elisha E. Griffith & others.

Be it remembered that this cause came on to be heard before the Hon. O. P. Temple, chancellor, &c., on this 5th day of December, 1867, on the pleadings & proof in the cause. And it appearing to the court that this is a proper case for an account—

1st. What assets of any nature or kind belonging to the estate of Jesse Rhea, deceased, have come to the hands of Elisha E. Griffith, ex'r of the last will of the said Jesse Rhea, dec'd, or ought to have come to his hands by due dil/igence.

2nd. What has become of the assets that have come to the hands of said executor.

3d. The master will report what amount, if anything, is due each of those entitled under the last will of Jesse Rhea, deceased, from said executor. The master will report hereof to the next term of the court, and all questions of law are reserved until the coming in of said report.

Deposition of John Minis.

In the Chancery Court at Madisonville, Tenn.

John T. Stephens & wife & others
vs.
E. E. Griffith & others.

Deposition of John Minis in the above cause, taken on this
31 18th day of May, 1868, at the office of S. P. Hale, clerk & master of the chancery court, at Madisonville, Tenn., in the presence of the solicitors of both parties; said witness, being duly sworn, testified as follows:

Question 1st, by W. L. EAKIN, sol'r: Please state where you resided during the early part of the late war, how long have you resided at that point, and were you an officer of the state, and had you a pretty general knowledge of the officers, state & confederate, who

were in power during the war in East Tennessee; what is your age, and what offices, if any, have you held since the war?

Answer. I resided in Madisonville, Monroe county, E. Tennessee, in the early part of the war, and had lived there 21 or 22 years; I was a justice of the peace in the early part of the war, and had been before the war commenced; I had some knowledge of the officers, state and confederate, then in power in East Tennessee; I am 50 years of age; I have been holding the office of justice of the peace since the year 1854, and during a part of this time have acted as chairman of the county court of Monroe county.

32 Q. 2, by same: Have you not been chairman of the county court of Monroe county since the war?

A. I have.

Q. 3, by same: When the war broke out state how public sentiment ruled in Monroe county during the early part of the war? Was or was not Union sentiments bound down by the rebel sentiments? Were any rebel companies of soldiers organized in this county; and, if so, how many? Was or was it not the prevailing sentiment of the county? Was any Union man mobbed at Madisonville in 1861 or 1862?

A. The public sentiment in Monroe county in the early part of the war was decidedly and strong "rebel." The Union sentiment was borne down and held in subjection by the rebel sentiment. Several rebel companies were organized in Monroe county; some eight or twelve companies, probably more. The prevailing sentiment of the county was decidedly rebel; some Union men were mobbed in Madisonville in both 1861 & 1862, and the same state of affairs remained until the federal forces entered the country in the fall of 1863.

33 Q. 4, by same: Under this state of affairs, was or was not a man personally safe to resist any requirement of the rebel state government or of the confederate government?

A. No man was personally safe to resist the requirements of the so-called confederate government whatever his politics might have been.

Adjourned till to-morrow morning 9 o'clock.

Met pursuant to adjournment at office of clerk & master, May 19, 1868.

Q. 5, by same: Was there any receiver or other officer appointed by Confederate government for the purpose of confiscating the property of Union men or debts due to men residing in the loyal states; and if so, who was that officer?

A. There was a man appointed by the confederate government for that purpose; Thomas J. Campbell was appointed for this congressional district, with his headquarters at Knoxville.

Q. 6, by same: Was he the same Thomas J. Campbell said to have held the rank of major in the rebellion, and the same man

who was judge advocate of a court-martial at Knoxville, Tenn.,
34 when some men were condemned on a charge of bridge burning during the war?

A. He is the same Thomas J. Crawford who, I am informed, held the office of major, and was judge advocate of a court-martial at Knoxville, Tenn., when some men were condemned on a charge of bridge burning during the war.

A. He is the same Thomas J. Campbell who, I am informed, held the office of major, and was judge advocate of a court-martial at Knoxville when some Union men were condemned on a charge of bridge burning.

Q. 7, by same: State, as near as you can, the manner in which he enforced his orders; was it mild or tyrannical; state fully in regard to this matter; state what his reputation was in regard to causing arrests and prosecuting men for refusing to obey the requirements of the so-called confederate government?

A. He was a very tyrannical, over-bearing man; his reputation was that he was a very austere and over-bearing, and that he would arrest any person who would refuse to comply with any of his requirements; all classes of men in this country were afraid to
35 refuse compliance with all his commands.

Q. 8, by same: Were any arrests made in Monroe county by the rebel authorities?

A. There were a good many arrests made in Monroe county, and among other persons I was arrested myself by the rebel authorities and taken to London and kept under strict guard for four or five days.

)The complainants by their solicitor except to the foregoing evidence as irrelevant, immaterial and hearsay; this 19th day of May, 1868.)

W. H. HICKS,
Solicitor.

Cross-examination, saving the benefit of the foregoing exceptions to the evidence:

1st interrogatory. State whether Mr. E. E. Griffith was not one of that class of gentlemen which he is pleased in the foregoing interrogatory to style "*rebels.*" Also state whether you ever knew of one of that class or any other class, even Union men, being ever troubled for failing to comply with any judgment rendered by a confederate court, so called; if so, state who it was and when and where they were so molested or troubled, and all the
36 facts and circumstances connected with such molestation.

Also state whether the aforesaid T. I. Campbell ever arrested or disturbed any one for failing to satisfy a judgment rendered by said so-called court. If so, state whom, when, where, and all about it. Also state whether you ever knew any man that *tried* to protect and save a debt due a creditor living in a loyal state and who did

not himself report such debt to the so-called confederate authorities, that was compelled to make such report by process of contempt or other process, or who, after judgment of confiscation was rendered, was compelled by any kind of process or in any other way to pay the debt to the rebel authorities. If so, state who it was, when and where it happened, what kind of process or force was used, who by and all about it.

A. E. E. Griffith was, as I believe, a southern man or a secessionist, and after the United States troops entered Tennessee he was called a rebel. I do not know of any one having been arrested or molested for not complying with any order of the authorities of the so-called confederate states, as the orders published as a common rule had the penalties attached, which was to be arrested and
37 debt increased. Whether any one did refuse to report I do not know of T. J. Campbell arresting any one, though I am informed and believe he sent confederate troops to arrest men and take them to Knoxville, what for I am not informed. I do not know of any man who did not report debts due men living in a loyal state. I do not know whether any one saved such debts or not. I think the most of men holding such debts were not willing to risk the chances of being arrested for refusing to report said debts. I do not know what kind of process, if any, was used. The confederate troops was used for the purpose of arresting men, and my observation was they did not tell men what they were arrested for.

2nd interrogatory. Was there ever any kind of order by the so-called confederate authorities to the effect that men should be arrested for failing to report debts due creditors being in loyal states, or any order to the effect that parties who failed to pay such debts into court when judgment of confiscation was rendered should
38 be arrested, or was the man who failed to report or pay over such funds in any danger of arrest or violence?

A. I do not know of any such orders; as to the orders after confiscation I do not anything; as to whether men would have been in danger of being molested or not I am not aware.

Further the deponent saith not.

JOHN MINIS.

Subscribed and sworn to before me May 22, 1858.

S. P. HALE, *C. & M.*

John T. Stephens & wife
vs.
E. E. Griffith et al.

Deposition of W. C. P. Jones.

Said witness, aged 40 years, being duly sworn, deposed as follows:

1st question, by H. Chambers, sol. for resp't: Please state where you resided during the time of the late war when the confederates

occupied and controlled East Tennessee, and state whether or not you were acquainted with the prevailing public sentiment during that time; if so, what was that sentiment towards Union men?

Answer. During the time spoken of I lived in Madisonville, Monroe county; I think I was pretty well acquainted with the prevailing sentiment towards Union men, and that sentiment was to a considerable extent hostile.

2nd quest. by same: Did or not the hostile sentiment you speak of extend to every man of whatever party who neglected to comply with orders emanating from confederate authorities, civil or military?

A. I think it did

3rd. Was it not the fact that the confederate authorities sequestered or confiscated the property of persons who lived beyond the confederate lines—especially if in any one of what was called northern states?

A. If a man left this country and went into the northern states his property was confiscated, and, I think, the property found in this country belonging to northern citizens was also confiscated or sequestrated.

4th quest. by same: What was the conduct of confederate officials generally in this part of the country towards persons who did not comply with their orders; did they or not ever arrest or imprison men for disobeying their orders?

A. They did generally do so; a disobedience of orders was always punished by an arrest, and unless a promise to comply was made, imprisonment followed.

5th quest. by same: Do you not know anything of a confederate court held in Knoxville, presided over by one Judge Humphreys, and in which T. J. Campbell an official of some kind; if so, state how said Campbell acted in carrying out the orders or decrees of said court?

A. My recollection is that there was such a court there, and that T. J. Campbell was a rigid executor of the decrees of said court.

6th. Do you know of any instances where property belonging to any person was confiscated by decree of said court; if so, please state them?

A. A certain house and lot in Loudon, said to belong to D. F. Harrison, was, as I understood, confiscated by a decree of that court.

Further saith not.

W. C. P. JONES.

Sworn & subscribed to before me May 25, 1868.

S. P. HALE, *C. & M.*

The complainants except to the foregoing depositions for the following causes:

1st. It is irrelevant.

2nd. It is hearsay.

3d. It is immaterial.

4th. There is better evidence of the matters of which it treats.

For these and other reasons complainants except to the use of said depositions as evidence.

May 25, 1868. W. J. HICKS,
Sol.

The above exceptions are sustained.

May 25, 1868. S. P. HALE,
C. & M.

From which action of the c. & m. the respondent appeals to the chancellor.

H. A. CHAMBERS,
Sol.

Deposition of James A. Coffin.

John F. Stephens and wife
vs.
E. E. Griffith and others.

Deposition of James A. Coffin, taken at the office of c. & m., in taking the account ordered to be taken in this cause; said witness, aged 61 years, being duly sworn, deposed as follows:

1st quest. by H. A. Chambers, resp't's sol.:

42 Please state what you may know in reference to the respondent in this cause paying money belonging to any of the heirs of the Rhea estate into the office of the clerk and master of the chancery court at Madisonville in obedience to the decrees of said court, particularly in reference to the part of Rebecca Keeble?

A. There was a bill filed in the chancery court at Madisonville, Tenn., while I was clerk and master, in behalf of Rebecca Keeble, a daughter of Jesse Rhea, dec'd, by her next friend, Wm. Rhea, for the purpose of having the portion of her father's estate due her settled upon. My impression is that she and her husband and E. E. Griffith, the ex'r of Jesse Rhea, dec'd, came to my office for the purpose of closing up the business so far as she was concerned. The transaction was entered upon the rule docket, which was afterwards during the late civil war destroyed by the soldiers. So well as I remember, E. E. Griffith paid some confederate notes into office, which was thereupon receipted for by said Rebecca Keeble and her husband; the amount was not large; I distinctly remember that the attorney's fee and costs of suit were deducted from the amount paid in, and my impression is very strong that the whole matter

43 was considered closed, so far as Mrs. Keeble's portion of said estate was concerned.

Further saith not.

J. A. COFFIN.

Subscribed and sworn to before me May 26, 1868.

S. P. HALE,
C. & M.

Report of C. & M.

John F. Stephens & wife
vs.
E. E. Griffith & others.

The undersigned attended at office on the 18th day of March, 1868, for the purpose of taking the account ordered by the hon. court to be taken in this cause to ascertain—

1st. What assets of any nature or kind belonging to the estate of Jesse Rhea, dec'd, have come to the hands of E. E. Griffith, ex'r of the last will of the said Jesse Rhea, dec'd, or ought to have come to his hand by due diligence.

2nd. What has become of the assets that have come to the hands of said executor.

3rd. The master will report what amount, if anything, is due each of those entitled under the last will of Jesse Rhea, dec'd,
44 from said executor, and would respectfully report—

1st. It appears from the answer of respondent E. E. Griffith that there remained in his hands as the distributive share of each of the heirs of Jane Rhea, dec'd, upon his final settlement as executor of the last will of said Jesse Rhea, dec'd, the sum of $995.16. The precise date of his said settlement he does not give, but a reasonable and just inference is that it was about two years from the time he entered upon the discharge of said trust, which he stated he did in August, 1859.

It further , from the answer of respondent Griffith that the personal assets of said estate, aside from the slaves, amounted to..... $415 66
From sale of slaves..... 8,865 00
From sale of lands, about 3,000 00

Amounting, in the aggregate, to..... ..... $12,280 00

Adjourned the account to the 18th day of May next.

May 18th, 1868.—Met pursuant to adjournment.

2nd. It appears from the pleadings and proof that the def't paid off all the resident heirs at law of Jane Rhea, deceased, to
45 each the respective amount due, and the amounts due those who were non-residents of the state, and who were citizens of "loyal" states, were confiscated or sequestrated by the so-called confederate government, and by a decree of some kind of a court at Knoxville, Tenn., he was ordered to pay the said amount into the hands of the agent or receiver of said confederate government.

This payment was made on the 7th day of July, 1863, and the money so paid belonged to the following-named persons, heirs at law of Jesse Rhea, deceased:

The heirs of Polly Couller, formerly Polly Rhea, of Illinois	$995 16
The heirs of Peggy Stephens, formerly Peggy Rhea, of Illinois	995 16
Eveline Magill, formerly Eveline Rhea, of Illinois	995 16
Lavinia Stephens, formerly Lavinia Rhea, of Illinois	995 16
Lewis Rhea, of Oregon	995 16
Riley Rhea, of California	995 16

3rd. Which aforesaid sums, with accrued interest, would appear due to the above-named parties respectively, to wit:

To each of principal	$995 16
Interest from Aug. 1, 1861, to June 1, 1868	407 95
	$1,403 11

46 All of which is respectfully submitted.

L. P. HALE, *C. & M.*

Exceptions to Report.

In the Chancery Court at Madisonville, Monroe county, Tennessee.

John F. Stephens and wife
vs.
E. E. Griffith and others.

Exceptions of Manly Keeble, adm'r of Rebecca Keeble, deceased, one of the heirs, &c.

Came the resp't by solicitor and excepts to the master's report, made to the present term of this court, on the following and other grounds of exceptions:

1st. Resp't resides in Blount county, and had not any notice of the time and place of taking the account in this case.

2. The deposition of James A. Coffin, the former clerk & master, was taken by the c. & m. in relation to the branch of the case in which this resp't is interested without any notice to this resp't of the time or place of taking the same.

3. The master reports that the heirs who reside here have been paid, and his report is based as to this resp't on the evidence of Coffin, who discloses a state of facts which makes him incompetent to testify, being interested.

This exception goes to the 2nd branch of the report to show
47 the debt paid.

4th. The c. and m. reports the share coming to this resp't and wife as paid, and does not bring forward any vouchers to show the same paid. Therefore for these and other reasons resp't Manley Keeble, adm'r of Rebecca Keeble, dec'd, excepts to the said report and tenders these his exceptions.

MANLEY KEEBLE, *Adm'r*,
By McGINLEY, *Sol.*

Affidavit of E. E. Griffith.—June 3, 1868.

Stephens & others
vs.
E. E. Griffith & others.

In this cause the def't Griffith makes oath that he cannot go safely to trial at the present term of this court without the testimony of Henry Elliott; affiant has not taken the depositon of said Elliott from the fact that he has been unable to ascertain his residence in time to get his testimony; affiant believes he can have the deposition of said Elliott at the next term of this court, and he is advised that it is very essential for the attainment of justice in this cause
48 for affiant to have said testimony. Wherefore affiant prays that this cause be continued until the next term of this court.

E. E. GRIFFITH.

Sworn to and subscribed before me June 3, 1868.

L. P. HALE, *C. & M.*

(Caption.) June term, 1868.

Be it remembered that on this the 1st day of June, 1868, the same being the first Monday of said month and the time for holding the chancery court for the chancery district of Monroe county, Tennessee, at the court-house in Madisonville, and the chancellor failing to appear at 3 o'clock p. m., I therefore adjourn this court until tomorrow morning, 8 o'clock.

S. P. HALE, *C. & M.*

WEDNESDAY, *June* 3, 1868.

Court met pursuant to adjournment; present and presiding, Honorable O. P. Temple, chancellor, when the following (among other) proceedings were had:

Continuance.

John F. Stephens & wife et al.
vs.
E. E. Griffith & others.

This cause is continued on the affidavit of the respondent.

49 (Caption.) December term, 1869.

Be it remembered that at a Court of Chancery begun and held at the court-house in Madisonville, on this 6th day of December, 1869, the same being the first Monday of Dec'r, and the regular time for holding the Chancery Court for the county of Monroe, there was present and presiding Hon. O. P. Temple, chancellor, &c., the following proceedings were had and entered of record, to wit:

THURSDAY MORNING, *December 9th*, 1868.

Court met pursuant to adjournment; Hon. O. P. Temple, chancellor, present & presiding.

Final Decree.

John F. Stephens & wife, Lavinia Stephens,
vs.
E. E. Griffith & others; and
John Coulter & others
vs.
E. E. Griffith & others.
} Consolidated causes.

Be it remembered, these consolidated causes came on to be heard and determined before the Honorable O. P. Temple, chancellor, &c., on this 9th day of December, 1869, on the pleadings and proof
50 in the causes and the report of the master to the June term of court 1868, and the exceptions of Manly Keeble, adm'r of Rebecca Keeble, thereto.

And the court being of opinion that the said exceptions are well taken, the same are allowed, and the cause is recommitted to the master to hear proof and report to the next term of the court in regard to the matter embraced in said exceptions; and said report being in all other matters unexcepted to is, in all things other than the matters embraced in said exceptions, confirmed; and it appearing from said report that there is due from the def't E. E. Griffith, as executor of the last will of Jesse Rhea, dec'd, the sum of nine hundred and ninety-five dollars & sixteen cents, with interest thereon from the 1st day of August, 1861, to each of the following respective parties as legatees under the last will of Jesse Rhea, deceased, which the said executor has failed and refused to pay; that is to say, to Polly Coulter, deceased, the aggregate sum of $995.16, with interest from the first day of August, 1861.

To the heirs of Peggy Stephens, a like sum ($995.16), with interest from the 1st day of August, 1861; to Evaline Magill, $995.16,
51 with interest from said August, 1861; to Lavinia Stephens, $995.16, with interest from said 1st day of August, 1861; and to Lewis Rhea and Riley Rhea each a like sum, with a like amount of interest.

It is therefore decreed that the respective parties aforesaid recover of said E. E. Griffith & Joseph E. Houston, Robt. Russell & John Carson, his sureties in his official bond as such executor, the sums due them respectively, as aforesaid, from said executor, and also the costs of this cause, for all of which execution may issue as at law.

From which decree the defendants pray an appeal to the next term of the Supreme Court, to be held at Knoxville on the second Monday of September next. And the court being of the opinion that the principals involved in the case are all determined by this decree, said appeal is granted on condition that the defendants execute

bond with good security, conditioned as required by law, for the successful prosecution of said appeal, and two months' time is allowed them for that purpose; but if such bond is not executed within the prescribed time, the master will issue an execution
52 to enforce collection of this decree, unless the same shall be paid and satisfied. On the trial of this cause the following receipts were read as evidence, the signature of the party whose name appears signed to each receipt being admitted to be genuine:

RECEIVER'S OFFICE, KNOXVILLE, 7 *July*, 1863.

Received of E. E. Griffith, administrator of the estate of Jesse Rhea, deceased, the sum of five thousand nine hundred and seventy 96-100 dollars, ($5,970 96,) being amounts decreed against him in the confederate states district court at Knoxville, under the sequestration laws of congress, as the property or monies in his hands belonging to the following alien enemies, viz:

The heirs of Polly Colter, formerly Polly Rhea, of Illinois.	$995 16
The heirs of Peggy Stephens, formerly Peggy Rhea, of Illinois	995 16
Eveline Magill, formerly Eveline Rhea, of Illinois	995 16
Lavinia Stephens, formerly Lavinia Rhea, of Illinois	995 16
Lewis Rhea of Oregon	995 16
Riley Rhea of California	995 16
	$5,970 96

T. J. CAMPBELL,
Receiver, &c.

53 $4.80. Received of E. E. Griffith $4.80 cents in the case of the confederate states against him in the district court, C. S. A., &c. at Knoxville.

July 7th, 1863. HENRY ELLIOTT, *Clerk.*

Appeal Bond.

We, E. E Griffith and A. A. Boyd, acknowledge ourselves indebted to John F. Stephens & wife, Lavinia Stephens, and John Coulter, Wm. Coulter, Margaret Tate & husband, E. W. Tate, Sarah J. Fox, a minor under the age of twenty-one years, who sues by her next friend, John Coulter, Wm. R. Stephens, Mary Ann Church & her husband Church, Margaret Jane McMillan & her husband, D. H. McMillan, John H., James M., Louis A., Sarah E. and Eliza Stephens, minors under the age of twenty-one years, who sues by their next friend, Joel Stephens, Eveline McGill & husband, John McGill, in the sum of two hundred and fifty , to be void if the said E. E. Griffith shall with effect prosecute an appeal by him prayed & obtained to the next term of the Supreme Court of the state of Tennessee, to be held at Knoxville on the 2nd Monday of September next, from a decree rendered by the Chancery Court at
54 Madisonville term, at Dec'r term, 1869, in the consolidated cases of John F. Stephens & wife *vs.* E. E. Griffith, Joseph

E. Houston, Robert Russell & John Carson, No. 183, or in case of failure therein fully pay and satisfy all costs therein adjudged him; otherwise to remain in full force & virtue.

January 27, 1870.

E. E. GRIFFITH.
A. A. BOYD.

Bill of Costs.

John F. Stephens & wife
vs.
E. E. Griffith et al.

State tax	$5 00
C. & M. L. P. Hale, filing bill	25
Aff't	25
Pros. bond	25
Rec'd'g	25
Sub. to ans	75
Copy & bill	1 25
Filing am'd bill	25
Aff't	25
3 sub'p's to ans	2 25
6 copies am'd bill	9 00
1 copy a. bill	1 25
Order publication	50
Postage	25
Jud'g't pro confesso	25
Rules	20
2 notices	50
Filing demurrer	25
Filing	3
Ans	75
Aff't to same	75
Notice	75
Taking 3 depo's	3 00
Aff. of E. E. Griffith	25
Report to June term 1868	5 00
Filing exceptions	25
8 dockets	80
Excepts to depo's	10
9 searches	90
5 motions & orders	1 25
1 cert	25
Final decre	1 00
Appeal bond	50
Recording same	25
Bill of costs	50
Transcript	13 50
Certificate and seal	50
	$48 25

55	D. S. A. Hawkins, sums. 28 def'ts	28 00
	" " G. W. Davis, Blunt co., sum. 5 def't	5 00
	Press and Times printer Pub. non-resident notice	5 00
	Witness W. C. P. Jones, Jno. Minis, & J. A. Coffin, each 1 day	3 00
		$89 25

John Coulter et al.
vs.
E. E. Griffith et al.

State tax	$5 00
C. & M. S. P. Hale, fil'g bill	25
Affi't	25
Pros. bond	25
Rec'd'g pros. bond	25
Sub to. ans	75
Copy bill	1 25
Ord. pub	50
Judg't pro con	25
Rules	20
8 dockets	80
2 motions & orders	50
Bill costs	50
5 searches	50
Transcript & seal	3 50
	$7 75

Transcript of the papers in the case of John Coulter & others *vs.* E. E. Griffith & others in the Chancery Court at Madisonville, Tennessee:

Pros. Bond.

We, John Coulter & W. J. Hicks, acknowledge ourselves held and bound unto E. E. Griffith, Joseph E. Houston, Robert Russell, & John Carson, in the sum of two hundred & fifty dollars, for payment of which we bind ourselves, our heirs, & legal representatives. Witness our signatures this May 26, 1866.

56 This bond shall be void if the said Coulter and others, who are his co-complainants, shall with effect prosecute a bill by them this day filed in the Chancery Court, at Madisonville, against said Griffith, Houston, Russell, & Carson, or, in the case of failure, pay and satisfy all costs awarded for such failure; otherwise to remain in full force.

JOHN COULTER,
By W. J. HICKS, *his Sol.*
W. J. HICKS.

Original Bill.

To the Honorable Samuel R. Rodgers, chancellor, &c., holding the Chancery Court at Madisonville:

John Coulter, Wm. Coulter, Margaret Tate & husband, E. W. Tate, Sarah J. Fox, a minor under the age of twenty-one years, who sues by her next friend, John Coulter, Wm. R. Stephens, Mary Ann Church & husband, Church, Margaret Jane McMillan & husband, D. H. McMillan, Jno. H., James M., Lewis A., Susan E., & Elizabeth Stephens, minors under the age of twenty-one years, who sue by their next friend, Joel Stephens, Emiline McGill & husband, John McGill, all citizens of the state of Illinois, compl'ts,

vs.

E. E. Griffith, Joseph E. Houston, Rob't Russell,
57 & John Carson, citizens of Monroe county, defendants.

The complainants respectfully show to the court that in the month of October, 1858, Jesse Rhea departed this life, having first made and published his last will, a copy of which, marked Exhibit "A," is herewith filed and prayed to be taken as part of this bill, which will was duly admitted to probate at the August term 1859 of the county court of Monroe co., and defendant Griffith, one of the executors named therein, entered into bond, as required by law, with the other defendants to this bill as his sureties, and entered upon the discharge of his duties of said trust, and the other executor named in said will never qualified as such. The said Jesse Rhea left eleven children or their lineal descendants, and as will more fully appear from said exhibit he directed that his property not bequeathed to his widow should be sold and the proceeds thereof divided among his lawful heirs, except the heirs of James Rhea, to whom he bequeathed five dollars each. Said Griffith, as executor, received funds belonging to the estate of Jesse Rhea, dec'd, about the year 1860 for
58 property belonging to said estate sold by him to the amount of ten or twelve thousand dollars over and above that was sufficient to pay the debts and charges against said estate, entitled to priority over complainants and other heirs of the said Jesse Rhea, dec'd, among whom it was provided by said will the proceeds of said property therein directed to be sold should be divided. Compl'ts John Coulter, Wm. Coulter, and Margaret Tate are children of Mary Coulter, deceased, who was a daughter of said testator. Comp't Sarah Jane Fox is the only child of Sarah Fox, dec'd, who was a daughter of said Mary Coulter, dec'd. Said Mary Coulter, dec'd, also left another daughter surviving her, to wit, one Martha Jane Brom, who resides in the state of Iowa.

Complainants Wm. R. Stephens, Mary Ann Church, Margaret Jane McMillan, James M. Stephens, Louis A. Stephens, Sarah E. Stephens,

and Eliza Stephens are the only children of Margaret Stephens, dec'd, who was a daughter of said testator. Compl't Emeline McGill is a daughter of said testator. Under said will said Emeline McGill is entitled to her share in said fund received as aforesaid by said executor (that
59 is, one eleventh part of the fund) with interest, and the said children of said Margaret Stephens, dec'd, are entitled in equal portions to the share that the said Margaret Stephens, dec'd, would be entitled to if living, and the aforesaid heirs of Mary Coulter, dec'd, are in like manner entitled to the share to which she would be entitled if living. The complainants pray that process issue to make said Griffith and his said sureties in his executor's bond parties defendant to this bill, and that they be required to answer the same fully. Let them answer particularly as to the amount of funds belonging to said estate received by said executor, and where and from what source.

They also pray for an account and a decree for such amount as is found due them, and for general relief.

W. J. HICKS, *Sol.*

STATE OF TENNESSEE, }
Monroe county. }

W. J. Hicks, solicitor for the compl'ts in the foregoing bill, makes oath, upon information, that he believes the statements therein to be true.

W. J. HICKS.

Subscribed and sworn to before me 1st August, 1866.

J. A. COFFIN, *D. C. & M.*

60 (Endorsed:) "No. 173;" original bill; John Coulter and others *vs.* E. E. Griffith and others; "filed Aug. 1, 1866; Exhibit A to W. J. Hicks' affidavit.

Sub. to Answer.

State of Tennessee to the Sheriff of Monroe county, greeting:

Summon Elisha E. Griffith, Joseph E. Houston, Robt. Russell, and John Carson to appear at the next term of the Chancery Court, to be held at the court-house in Madisonville on the first Monday of December, 1866, to answer the bill of complaint of John Coulter and others, filed in said court against them, when and where you will make due return of this writ.

Witness S. P. Hale, clerk and master of said court, at office in Madisonville, the first Monday of June, 1866.

S. P. HALE, *C. & M.*

(Endorsed:) No. 173; sub. to answer; John Coulter et al. *vs.* E. E. Griffith et al.; iss'd Aug. 1, 1866; came to hand Aug. 1, 1866; executed as commanded, and a copy of the original bill left with def't E. E. Griffith; L. M. Blackman, d. sh'ff; Exhibit A to S. P. Hale's affidavit.

61 *Order of publication.*—April rules, 1867.

John Coulter et al.
vs.
E. E. Griffith et al.

Complainants' bill charges that defendants Jesse Rhea, Nancy Rhea, James Rhea, Margaret Rhea, Spencer Rhea, Martha J. Brown, John Morgan, Sarah Morgan, Lewis Rhea, and Riley Rhea are non-residents of the state of Tennessee. It is therefore ordered that publication be made for four successive weeks in the Press & Times, a newspaper published at Nashville, notifying said non-resident defendants to appear at the next term of the Chancery Court to be held at the court house in Madisonville, Monroe county, Tenn., on the first Monday of June next, and make defence to complainants' said bill, or the same will be taken for confessed, and the cause set for hearing ex parte as to them. (This order was published in the Press & Times at Nashville for four weeks in succession, commencing April 9, 1867.)

S. P. HALE,
C. & M.

Demurrer.

John Coulter and others
vs.
E. E. Griffith and others.

The defendants, by their solicitors, say they are not bound to answer said bill of John Coulter and others except by demurrer,
62 and they do demur to the same and show the following causes of demurrer: 1st. Said bill discloses the fact that there are several other persons who are not sued that are interested in the fund sued for, who are not made parties to the bill. For this and other reasons they demur, &c., and pray judgment, &c.

GEO. BROWN,
Solicitor.

(Endorsed:) Exhibit B to W. J. Hicks' affidavit.

Judgment pro confesso.—October rules, 1869.

The resident resp'ts having been duly served with process, and publication having been regularly made as to non-resident resp'ts, and they all having failed to answer, judgment pro confesso is therefore, on motion of complainants' solicitors, entered against them.

Affidavit of C. & M.—In the Chancery Court at Madisonville.

John Coulter and others
vs.
E. E. Griffith and others.

In this cause, Stephen P. Hale, clerk and master of said court, makes oath that he has made diligent search in his office for the orig-

inal papers in this cause, consisting as he now remembers of the original will, exhibit thereto, (a copy of Jesse Rhea's last will,) prosecution bond, subpœna to answer, and the demurrer to the bill,
63 and has not been able to find any of said original papers except the prosecution bond. The others have been lost or mislaid unintentionally, so far as affiant is concerned or knows. No answer was filed till said cause was consolidated with the case of John F. Stephens and wife *v.* E. E. Griffith and others, and the answer to the bill in this case and the original and amended bills in the latter cause is on file in said case of Stephens and wife. The paper marked Exhibit "A" to his affidavit is, so well as affiant remembers, a substantial copy of said original subpœna to answer and the endorsement thereon.

Sworn and subscribed to before me this 7th day of Dec., 1868.

O. P. TEMPLE,
Chancellor.

Affidavit of W. J. Hicks.

In Chancery Court at Madisonville.

John Coulter and others
vs.
E. E. Griffith & others.

In this cause W. J. Hicks, solicitor for complainants, makes oath, according to the best of his recollection, that the paper marked
64 "Exhibit A," to this affidavit, is a substantial copy of the original bill filed in this cause; that the exhibit thereto was identical, word for word, with the writing filed as "Exhibit A" to the bill of John F. Stephens & wife *vs.* E. E. Griffith and others, with which this cause has been consolidated, and that the paper marked "Exhibit B" to this affidavit is, so well as he remembers, a substantial copy of the demurrer filed in this cause.

W. J. HICKS.

Subscribed & sworn to before me this 7th day of December, 1868.

S. P. HALE, *C. & M.*

(Caption.) December term, 1868.

Be it remembered that on this the 7th day of Dec., 1868, the same being the first Monday of said month, and the time for holding the Chancery Court for the chancery district of Monroe county, at the court-house in Madisonville, there was present and presiding the Hon. O. P. Temple, chancellor, &c., when the following proceedings were had:

TUESDAY, *Dec.* 9, 1878.

Court met pursuant to adjournment: Honorable O. P. Temple presiding.

65 John Coulter et al.
vs.
E. E. Griffith et al.

In this cause, on motion of complainants' solicitor, it appearing to the court from the affidavits of the clerk and master thereof that the original bill, exhibit thereto subpœna to answer, and the demurrer to the original bill have been unintentionally lost or mislaid, and the court being satisfied from said affidavit and the affidavit of W. J. Hicks, that the papers appear to be substitutes and substantially copies of the papers lost or mislaid as aforesaid, that is to say, that Exhibit A to the affidavit of Stephen P. Hale, the clerk and master, is a substantial copy of the original subpœna to answer, and the endorsement thereon that Exhibit A to said affidavit of W. J. Hicks is a substantial copy of the original bill, and that exhibit to the original bill of John F. Stephens and wife *vs.* E. E. Griffith and others, with which this cause has been consolidated, is a substantial copy of the exhibit to the original bill in this cause, and that Exhibit B to said last named affidavit is a substantial copy of the demurrer filed to complainants' bill: It is ordered that said papers offered to be substitutes as aforesaid, be substituted in lieu of the original papers lost or mislaid as aforesaid.

66 I, S. P. Hale, clerk and master of the chancery court at Madisonville, for Monroe county, Tennessee, do hereby certify that the foregoing 66 pages contain a full, true and perfect transcript of the papers and records in the consolidated causes of John T. Stephens and wife *vs.* E. E. Griffith, and John Coulter and others *vs.* E. E. Griffith, as the same appear on file and of record in my office.

Given under my hand and official seal at office in Madisonville, February 3, 1870.

[L. S.] S. P. HALE, *Com'r.*

Order.

Proceedings in Supreme Court, September Term, 1871.—October 31, 1871.

John Coulter et al.
vs.
E. E. Griffith et al.

In this case the death of the defendant Robert Russell is suggested and admitted.

FRIDAY, *November* 10, 1871.

John F. Stephens and wife, and John Coulter,
vs.
E. E. Griffith et al.

67 In this cause, on motion of complainants' solicitor, it is ordered the *scire facias* issue returnable to the next term of the

court against J. R. Russell, administrator of Robert Russell, deceased, requiring said administrator to appear on the first day of next term of the court and show cause, if any he can, why this suit shall not be revived against him as such administrator.

Order.

September term, 1872.—Monday, Sept. 23, 1872.

John F. Stephens & wife et al.
vs.
E. E. Griffith et al.

It appearing of record that scire facias has duly issued to J. R. Russell, adm'r of Robert Russell, dec'd, and been returned with service acknowledged, it is therefore ordered that this cause be & the same is hereby revived against the said J. R. Russell, adm'r, as aforesaid, & stand in the same plight and condition as at the death of the said Robert Russell.

September term, 1873.—Friday, Dec. 12, 1873.

Jno. F. Stephens & wife et al.
vs.
E. E. Griffith et al.

In this cause the death of John Carson was suggested and admitted, and by the consent of parties the cause was abated as to
68 him.

Final Decree.

WEDNESDAY, *Dec.* 17, 1873.

John F. Stephens & wife et al.
vs.
E. E. Griffith et al.

This cause came on to be heard on this 17th day of Dec., 1873, before the hon. the judges of the Supreme Court of Tennessee, on the transcript of the record from the Chancery Court at Madisonville, which having been read and argument of counsel heard, and the court being of the opinion that there is error in the decree of the chancellor, the same is reversed.

And it appearing to the satisfaction of the court that the compl'ts are not entitled to the relief prayed for in their respective bills, it is ordered, adjudged, and decreed that said bills be and the same are hereby dismissed, and that resp'ts recover of John F. Stephens & John Coulter, and of W. J. Hicks, their security in the prosecution bonds, the costs of the Chancery Court and this court, for which let execution issue.

Executions.

69 State of Tennessee to the Sheriff of Monroe county, greeting:

You are hereby commanded that of the goods and chattels, lands and tenements, of John F. Stephens & wife, Levinia Stephens, and security, W. J. Hicks, if to be found in your county, you cause to be made the sum of —— dollars debt and security, nine 50-100 dollars costs, which E. E. Griffith lately in our Supreme Court of Errors and Appeals at Knoxville recovered against them, whereof they are liable, as it appears of record, and have you said money ready to send it before the judges of our said court at the court-house in Knoxville on the second Monday of March next, and have you then and there this writ.

Witness J. F. Deaderick, clerk of our said court, at office, the second Monday of September, 1873.

J. F. DEADERICK, *Clerk.*

State tax	5 00
C. & M. Hale, filing bill, 25; aff't, 25; pros. bond, 25; proceedings, 25; sub. to ans., 75; copy O bill, 1.25; filing am'd bill, 25; aff't, 25; 3 subps. to ans., 2.25; 6 copies am'd bill, $9; 1 copy O bill, 1.25; order pub., 50; postage, 25; judg't pro con., 25; rules, 20; 2 notices, 50; fil'g dem'r, 25; fil'g 3 answers, 75; aff., 75; taking 3 depo's, aff't of E. E. Griffith, 25; rep't to June term, 1868, $5.00; fil'g	
70 excepts., 25; 8 dockets, 80; exceptions to depo's, 10; 9 searches, 90; 5 motions & orders, 1.25; 1 cert., 25; final decree, 1.00; bill costs, 50	23 50
D. Sheriff A. Hawkins, sum. 28 def'ts	28 00
" G. W. Davis, Blount co., 5 def'ts	5 00
Printer, Press & Times, publishing non-resident notice	5 00
Witness W. C. P. Jones, Jno. Minis, & I. A. Coffin, each 1 day, at 1.00	3 00
	$79 50

Decree Dec. 17, 1873, *vs.* compl't & security, W. J. Hicks.

("Endorsed:") Fi. fa. Monroe, 3266; Jno. F. Stephens & wife *vs.* E. E. Griffith et al. Issued Jan'y 1, 1874. Came to hand Jan'y, 1874. Returned to office this 2nd Monday of March, 1874, satisfied in full; receipt of cl'k Hales on back of this fi. fa. J. E. Houston, sh'ff.

J. E. HOUSTON, *Sh'ff.*

Received from J. E. Houston, sh'ff, $79.50 (seventy-nine & 50-100 dollars,) the costs on within named cause in Chancery Court of Monroe co., Tenn.

March 12, 1874. S. P. HALE, *C. & M.*

3267. State of Tennessee to the Sheriff of Monroe county, greeting: You are hereby commanded that of the goods and chattels, land and tenements of John Coulter, Wm. Coulter, E. W.
71 Tate & wife, Margaret & Joel Stephens, next friend, &c., & security, W. J. Hicks, if to be found in your county, you cause to be made the sum of dollars debt and twenty 25-100 dollars costs, which E. E. Griffith et al. lately in our Supreme Court of Errors and Appeals at Knoxville recovered against them, whereof they are liable as it appears of record, and that you have said moneys ready to render before the judges of our said court at the court-house in Knoxville on the second Monday of March next, and have you then and there this writ. Witness J. F. Deaderick, clerk of our said court, at office, the second Monday of September, 1873.

J. F. DEADERICK, *Cl'k.*

State tax.....	$5 00
C. & M. Hale, filing bill, 25; affi., 25; pros. bond, 25; rec'd. pros. bond, 25; sub. to ans., 75; copy bill, 1.25; order publication, 50; judg't pro con., 25; rules, 20; docketing, 80; 2 notices, 50; bill costs, 50; 2 searches, 50.....	6 25
D. Sh'ff L. M. Blackman, sum. 4 def't.....	4 00
Printer Press & Times non-resident notice.	5 00
	$20 25

Decree Dec. 17, 1873, *cs.* compl't and security, W. J. Hicks.

(Endorsed:) Fi. fa., Munroe. 3267. John Coulter et al. *cs.* E. E. Griffith et al. Iss'd Jan'y 1, 1874, came to hand Jan'y, 1874, returned to office this 2 Monday of March, 1874. Satisfied
72 in full by cash paid me by W. J. Hicks, s'c'ty. Cl'k Hale's receipt on back of this fi. fa. Jos. E. Houston, sh'ff.

Rec'd from J. E. Houston, sh'ff, $20.25, (twenty dollars and twenty-five cents costs,) due in Chancery Court at Munroe county, Tenn., in within named case.

S. P. HALE, *C. & M.*

March 12, 1874.

State of Tennessee to the sheriff of Monroe county, greeting:

You are hereby com'ded that of the goods and chattels, lands and tenements of John F. Stephens and wife Lavinia, John Coulter, Wm. Coulter, E. W. Tate and wife Margaret, and Joel Stephens, next friend, &c., and security, W. J. Hicks, if to be found in your county, you cause to be made the sum of dollars debt and fifty-three 73-100 dollars costs, which E. E. Griffith lately in our Supreme Court of Errors and Appeals at Knoxville recovered against them, whereof they are liable as it appears of record, and that you have said money ready to render before the judges of our said court at the court-house in Knoxville, on the second Monday of March next,

and have then and there this writ. Witness J. F. Deaderick, clerk of our said court, at office, the second Monday of September, 1873.

J. F. DEADERICK, *Clerk.*

73 *Costs of Supreme Court.*

State tax	$5 00
Clerk Deaderick: 10 rules, $1.00; 30 dockets, $3.00; taxing, 3; bill cert's, $1.50; judg't, 75; entry decree, 15; judg't vs. sureties, 25; judg't for cert's, 25; order to enroll, 25; enrolling, $1.60, 50 re'ds, $16.25; notice, 20; 4 orders, 1.00; 3 cert's, 75; 4 notices, $1.00; 3 fi. fa. & copy cert's, $1.95; postage, 8; sci. fa., 50	28 98
Cl'k Patterson: H'g record, 75; sect'ng, 25; 10 dockets, 1.00	2 00
Cl'k S. P. Hale: Transcript, 16,500 words, $16.50; appeal bond, 75; seal, 50	17 75
	$53 73

Decree Dec. 17, 1873, *cs.* compl't in both suits & sec't'y, W. J. Hicks.

(Endorsed:) Fi. fa. Monroe, 3268. J. F. Stephens & wife et al. *vs.* E. E. Griffith et al. Iss'd Jan'y 1, 1874. Came to hand. Returned to office satisfied in full by cash collected of W. J. Hicks. Receipt of clerk below accompanying this fi. fa. See receipt on back fi. fia. this 2nd Monday of March, 1874. Jo. E. Houston, sh'ff.

Rec'd from J. E. Houston, sh'ff, $17.75 (seventeen 75-100 dollars,) my costs in within-named case, March 12, 1874.

S. P. HALE, *C. & M.*

74 STATE OF TENNESSEE,
Supreme Court, at Knoxville.

I, J. F. Deaderick, clerk of the Supreme Court of said state, at Knoxville, do hereby certify that the foregoing is a full and true transcript of the records of the cause therein named, as the same appear of record in my office.

Given under my hand and the seal of said court, at office in Knoxville, this 18th day of September, 1878.

[SEAL.] J. F. DEADRICK, *Clerk.*

STATE OF TENNESSEE.

I, James W. Deaderick, chief justice of the Supreme Court of said state, do hereby certify that J. F. Deaderick, whose
75 genuine official signature appears to the foregoing certificate, is, and was at the time of signing, the clerk of said Supreme Court, at Knoxville, duly elected and sworn; that full faith and

credit are due to his official acts; that the seal thereto affixed is the seal of our said court, and that said attestation is in due form of law.

Given under my hand at chambers this 18th day of September, A. D. 1878.

[SEAL.] JAS. W. DEADERICK,
Chief Justice of the Supreme Court of Tennessee.

STATE OF TENNESSEE,
Supreme Court, at Knoxville.

I, J. F. Deaderick, clerk of said court, do hereby cer-
76 tify that James W. Deaderick, whose name is subscribed to the foregoing, is presiding chief justice of the said Supreme Court, duly elected, commissioned, and sworn; and that the signature of said chief justice to said certificate is genuine.

Given under my hand and the seal of said Supreme Court, at office in Knoxville, this 18th day of September, 1878.

[SEAL.] J. F. DEADERICK, *Clerk.*

Now comes Eliza Stevens and says that the Supreme Court of the state of Tennessee errored in dismissing bill and in revising the decree of the court below, as appears on the record and proceedings aforesaid.

ELIZA STEVENS.
WM. R. SPINGER.
JOS. MUDENBAUM.

77 The United States of America to E. E. Griffith, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the state of Tennessee, wherein Eliza Stevens is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Noah H. Swayne, associate justice of the Supreme Court of the United States, this seventeenth day of October, in the year of our Lord one thousand eight hundred and seventy-nine.

N. H. SWAYNE,
Associate Justice Sup. Ct. U. S.

78 Come to hand November 18, 1879.

J. C. WARREN,
Sheriff.

Received J. M. Durham one dollar, my fee in this cause, Nov. 18, 1880.

J. C. WARREN,
Sheriff.

On this fifteenth day of February, in the year of our Lord one thousand eight hundred and eighty, personally appeared J. C. Warren, sh'ff, &c., before me, the subscriber, S. P. Hale, a United States commissioner, and makes oath that he delivered a true copy of the within citation to E. E. Griffith, the within named, on the 24th day of November, in the year of our Lord one thousand eight hundred and seventy-nine. Service by

J. C. WARREN,
Sheriff Monroe county, Tenn.

Sworn to and subscribed the above Feb'y 15, 1880.
[SEAL.] S. P. HALE,
U. S. Com'r.

79 UNITED STATES OF AMERICA, *ss.*

The President of the United States to the honorable the judges of the Supreme Court of the state of Tennessee, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the said state in which a decision could be had in the said suit between E. E. Griffith, appellant, and John Stevens and wife, Eliza Stevens, consolidated with John Coulter, William Coulter, Margaret Tate, and husband, E. W. Tate, Sarah J. Fox, minor, by her next friend, John Coulter, William K. Stevens, Mary A. Church and husband, ——— Church, Margaret Jane McMillion and husband, D. H. McMillion, John H. Stevens, James M. Stevens, Lewis A. Stevens, Susan E. Stevens & Eliza Stevens, by their next friend, John Stevens, appellees, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said state, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in
80 favor of such their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Eliza Stevens, as by her complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then

under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, chief justice of the said Supreme Court, the seventeenth day of October, in the year of our Lord one thousand eight hundred and seventy-nine.

Issued 17 Oct'r, 1879.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Allowed by—

N. H. SWAYNE,
Associate Jus. Sup. Court U. S.

81 To the Hon. Justice Harlan, one of the justices of the Supreme Court of the United States of America:

The petition of Eliza Stevens, a citizen of the state of Illinois, for leave to prosecute a writ of error to the east grand division of the Supreme Court of the state of Tennessee, at Knoxville. On the record of the said court remaining, wherein E. E. Griffith was appellant, in an appeal from the county of Monroe, in said state, and John Stevens and wife, Levina Stevens, citizens of the state of Illinois, as complainants, were consolidated with John Coulter, William Coulter, Margaret Tate and husband, E. W. Tate, Sarah J. Fox, minor, under the age of twenty-one years, who sues by her next friend, John Coulter, William R. Stevens, Mary A. Church
82 and husband, ——— Church, Margaret Jane McMillion and husband, D. H. McMillion, John H. Stevens, James M. Stevens, Louis A. Stevens, Susan Stevens, and Eliza Stevens, by their next friend, John Stevens, all citizens of the state of Illinois, appellees in said appeal and complainants in original bills consolidated, Eliza Stevens, the petitioner, states that she and the other named appellees filed their bills in the Chancery Court of Monroe county, state of Tennessee, in the year 1866, as legatees under the last will of Jesse Rhea, deceased, against appellant in the said Supreme Court, E. E. Griffith and his sureties, as executor of said deceased. That they were such legatees, and a large sum of money due them formerly as such was admitted in said cause, and not an issuable fact, but set up as the only defence thereto by the said E. E. Griffith. That the late so-called confederate states of America sequestered the money due them as such legatees as public enemies in 1862,
83 pleading the confederate rule as a statute within said state as an integral part of the confederacy as of paramount authority

over the Constitution of the United States. The right of the petitioner, under the Constitution of the United States, as a citizen thereof, to recover said money thereby, *come in question* as the only *question at issue in said cause*, and the said bill in the said Supreme Court of the state of Tennessee, at the September term, 1873, was by the order thereof dismissed, and the recovery by appellees in the court below was reversed and annulled, and the decision of the said Supreme Court of the state of Tennessee was against the supremacy of the Constitution of the United States, and the right of recovery of petitioner thereunder.

Eliza Stevens, petitioner, states that the said decision of the Supreme Court of the state of Tennessee was in the highest court of appeal and error, both in law and equity, in said state, and
84 that the order of dismissal of said bill was final and against petitioner, and no other court having jurisdiction to give any remedy.

That the statute of limitations has run against all the other appellees in the said Supreme Court; wherefore she prays for a writ of error from the Supreme Court of the United States to the first grand division of the Supreme Court of the state of Tennessee, at Knoxville, on the said record. Petitioner further states that the statute of limitations has not run against her.

ELIZA STEVENS.

Brief.—Williams *vs.* Bruffy; Supreme Court of the United States; decided March 25th, 1878.

ELIZA STEVENS.

(Endorsed:) Petition of Eliza Stevens for a writ of error from the Supreme Court of the United States to the Supreme Court of Tennessee, to the east grand division at Knoxville, on the record within.

85 *Copy.*

Know all men by these presents, that we, E. W. Tate and John F. Stephens, are held and firmly bound unto E. E. Griffith in the full & just sum of five hundred dollars, to be paid to the said E. E. Griffith's certain attorney, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, & administrators, jointly and severally, by these presents. Sealed with our seals and dated this seventeenth day of October, in the year of our Lord one thousand eight hundred & seventy-eight.

Whereas lately at Knoxville, in the state of Tennessee, in a suit depending in said court between E. E. Griffith, appellant, & *against* John F. Stephens, William Coulter, Leona Stephens, William Coulter, Marg*rate* Tate & her husband, E. W. Tate, Sarah J. Fox, a minor, by her next friend, John Coulter, W. R. Stephens, Mary A.

Church & her husband, —— Church, Margaret Jane McMillion and her husband, D. H. McMillion, John H. Stephens,
86 James M. Stephens, Lewis A. Stephens, Susan E. Stephens & Eliza Stephens, who sue by their next friend, John Stevens, Emeline McGill and her husband, John McGill, a decree was rendered against the said Eliza Stephens & others, last above named; & the said Eliza Stephens having obtained a writ of error, & filed a copy thereof in the clerk's office of the said court, to reverse the decree in the aforesaid suit; and a citation directed to the said E. E. Griffith, citing and admonishing to be & appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such, that if the said Eliza Stephens shall prosecute writ of error to effect, & answer all damages and costs if she fail to make her plea good, then the above obligation to be void; else to remain in full force
87 & virtue.

E. W. TATE. [L. S.]
JOHN F. STEPHENS. [L. S.]

Sealed and delivered in presence of—
J. M. DUNHAM.

Approved by—
N. H. SWAYNE,
Asso. Jus. Sup. Ct. U. S.

Approved by—
S. H. TREAT,
Dist. Judge, U. S., for south. dist. Ill.

State of Tennessee, Supreme Court at Knoxville.

I, J. F. Deaderick, clerk of said Supreme Court at Knoxville, do hereby certify that the foregoing is a full & true copy of the original bond for writ of error in the suit therein named, filed by the appellants, & now on file in my office.
88 Given under my hand & the seal of said Supreme Court at Knoxville, this 24th day of November, A. D. 1880.

[SEAL.] J. F. DEADERICK,
Clerk.

(Endorsed on cover:) Tennessee Supreme Court. No. 211. Eliza Stevens, plaintiff in error, *vs.* E. E. Griffith. Filed 24th December, 1880. 88 pages.

111-44

Supreme Court of the United States.

No. 211.

ERROR TO THE SUPREME COURT OF TENNESSEE AT KNOXVILLE.

ELIZA STEPHENS, PLAINTIFF IN ERROR,

vs.

E. E. GRIFFITH, DEFENDANT IN ERROR.

JAMES M. DURHAM,
Counsel for Plaintiff in Error.

Judd & Detweiler, Printers.

Supreme Court of the United States.

No. 211.

ERROR TO THE SUPREME COURT OF TENNESSEE AT KNOXVILLE.

ELIZA STEPHENS, PLAINTIFF IN ERROR,

vs.

E. E. GRIFFITH, DEFENDANT IN ERROR.

Abstract and Brief for Plaintiff in Error.

This cause is and originated as follows: Jesse Rhea died testate in Monroe county, State of Tennessee, and defendant in error qualified as his executor, and probated the will in said county, in 1859, at the August term of the probate court, and converted decedant's estate into money within two years following. The legatees in the will resided in the States of Tennessee, Illinois, and California. Those residing in Illinois exhibited two bills in chancery, in said county, in 1867, against E. E. Griffith and sureties, which were consolidated, and thus answered by defendant in error, admitting the will, assets, and that the complainants were the legatees named in the will, and pleading, in bar of his liability to account, that the legacies were in his hands in July, 1863, and were by the Confederate authorities confiscated by some proceedings of a court at Knoxville, Tennessee. (This part of his answer cannot well be abridged.)

Issues were referred to master in chancery to take account as to what assets came into the hands of E. E. Griffith as executor, &c., and what became of them. He reported $3,980.64 principal and $1,630.80 interest; total, $5,611.44 as due complainants, which had been paid to a receiver of the Confederate States at Knoxville, Tennessee. The court decreed complainants this amount and interest was included from July, 1861, (which during war was error,) and from this decree E. E. Griffith appealed, his sureties not joining; and on appeal the supreme court of Tennessee, September, term, 1873, on December 17, 1873, reversed the decree of the court below and dismissed the bills. At the time of the allowance of the writ of error all the other parties to the record were barred by limitation.

Error Assigned.

1. The supreme court of Tennessee erred in dismissing complainants' bills on the answer in bar of confiscation.

The supreme court of Tennessee filed no opinion; I applied, and the clerk so stated. Had it so done it would have appeared in the report of 6 Baxter, which contained the opinions of the term in which it was rendered.

Brief and authorities of Plaintiff in Error.

We shall be brief, as every question for the determination of the court in this cause except collatteral questions have been settled by it.

The Hon. supreme court of Tennessee in all reasonable intendment reversed the decree of the court below in this record, on the matter plead in bar of complainant's bill. In the formal language of such orders they were "dismissed for want of equity." There is no suggestion of a wrong action or want of jurisdiction in the court, nor could there be. "No legacy is recoverable at common law unless assented to by the executor."

1 Story's Equity, 591.

That the writ of error was rightfully granted we cite Williams *vs.* Bruff. *Post.*

At the time this cause was decided in the court of chancery below, the supreme court of Tennessee had twice held such defences as made in this cause unavailable, and doubtless retraced its steps under misconception of some of the decisions of this honorable court.

We are now to the matter plead in bar of the bills in this record.

The answer does not show that money of complainant's was kept separate and apart from his, defendant's, and actually and specifically seized by a military force; nor that any force was used or immediately impending. Failing in this it is nugatory. This kind of defense is akin to duress.

"Duress is where one is kept in prison, or restrained of his liberty, contrary to law, or threatened to be beaten, maimed, or greatly beaten," (old book.) Terms of the law.

"It is encumbent on those who make force their defense to show force. The force that doth excuse is a present fear of death."

Note 12, by Christian, Book 4, page 30, Sharswood's Blackstone.

The seizure in insurrectionary territory of tangible property of law-abiding citizens may be set up as a defense in actions against trustees and bailees, but debts due such citizens not being tangible, cannot be subject to seizure, which shall operate as a payment of such debts.

Williams *vs.* Bruffy, 6 Otto, 176.

United States *vs.* Keehler, 9 Wallace, 83.

The record seems to show that defendant in error was a rebel. How then can he say payment was involuntary. He, as such, was helping to put himself in durance. He was like Paul, consenting unto the death of Stephen. Loss has to be sustained by one of the parties litigant, one contributed to the loss, the other did not. What is equity in the premises independent of any positive rule? The great poet of Nature says, "Mercy twice blessed—It blesses him that gives and him that takes." Is not equity some akin to mercy?